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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

KEITH HITCHINGS,

Petitioner - Appellant,

v.

ROSANNE CAMPBELL, Warden,

Respondent - Appellee.

No. 06-16519

D.C. No. CV-05-02981-PJH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted November 5, 2007^{**}
San Francisco, California

Before: NOONAN and McKEOWN, Circuit Judges, and TRAGER^{***}, Senior Judge.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable David G. Trager, Senior United States District Judge for the Eastern District of New York, sitting by designation.

Keith Hitchings appeals the district court's denial of his petition for habeas corpus. We have jurisdiction over this appeal under 28 U.S.C. § 2253.

Hitchings was convicted of two counts of second degree murder. After exhausting his direct state appeals and state habeas review, Hitchings filed an unsuccessful petition for habeas corpus in the district court. The sole issue in this appeal is whether his state appellate counsel was ineffective for failing to raise in his appeal to the California Court of Appeal whether the trial court's failure to give CALJIC 8.45 was reversible error.

We review de novo the district court's denial of a habeas petition. Lopez v. Thompson, 202 F.3d 1110, 1116 (9th Cir. 2000) (en banc). Under the Antiterrorism and Effective Death Penalty Act of 1996, which is applicable to Hitchings' petition, we may grant a writ of habeas corpus to Hitchings only if we conclude "the state's adjudication of his claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Edwards v. Lamarque, 475 F.3d 1121, 1125 (9th Cir. 2007) (en banc) (quoting 28 U.S.C. § 2254(d)).

"Because this case involves a claim of ineffective assistance of counsel, there is an

additional layer of deference to the choices of [the state appellate] counsel.” Id. at 1126.

In denying Hitchings’ habeas petition, the California Court of Appeal correctly cited Strickland v. Washington, 466 U.S. 668 (1984), as the relevant Supreme Court precedent on ineffective assistance of counsel, accurately stated the facts, and applied Strickland to conclude that Hitchings’ appellate counsel did not err, and that even if he did, there was no prejudice. The state appellate court’s application of Strickland to these facts was not unreasonable.

AFFIRMED.